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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

On December 31, 2008, petitioner filed a document herein captioned “Memorandum of Law in Support of Writ of Habeas Corpus, §2241.”

28 U.S.C. § 2241(c)(3) empowers a district court to issue a writ of habeas corpus before a judgment is entered in a criminal proceeding. As a general proposition, a federal court will not intervene in a pending state criminal proceeding absent extraordinary circumstances where the danger of irreparable harm is both great and immediate. *See Younger v. Harris*, 401 U.S. 37, 45-46,

1 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971); *see also Fort Belknap Indian Community*  
2 *v. Mazurek*, 43 F.3d 428, 431 (9th Cir. 1994) (abstention appropriate if ongoing  
3 state judicial proceedings implicate important state interests and offer adequate  
4 opportunity to litigate federal constitutional issues). “[O]nly in the most unusual  
5 circumstances is a defendant entitled to have federal interposition by way of  
6 injunction or habeas corpus until after the jury comes in, judgment has been  
7 appealed from and the case concluded in the state courts.” *Drury v. Cox*, 457 F.2d  
8 764, 764-65 (9th Cir. 1972); *see also Carden v. Montana*, 626 F.2d 82, 83-84 (9th  
9 Cir. 1980).

10 *Younger* abstention is appropriate in favor of a state proceeding if three  
11 criteria are met: (1) the state proceedings are ongoing; (2) the proceedings  
12 implicate important state interests; and (3) the state proceedings provide an  
13 adequate opportunity to litigate the plaintiff's federal constitutional claims. *See*  
14 *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432,  
15 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982); *Kenneally v. Lungren*, 967 F.2d 329,  
16 331-32 (9th Cir. 1992). An exception to *Younger* exists if petitioner makes a  
17 “showing of bad faith, harassment, or some other extraordinary circumstance that  
18 would make abstention inappropriate.” *San Jose Silicon Valley Chamber of*  
19 *Commerce PAC v. San Jose*, 546 F.3d 1087, 1092 (9th Cir. 2008) (quoting  
20 *Middlesex*, 457 U.S. at 435). Here, it appears to the Court that all three criteria for  
21 *Younger* abstention are met with respect to the criminal proceeding still pending  
22 against petitioner in California. Moreover, petitioner has failed to show the type  
23 of special circumstances that warrant federal intervention. Nor has he shown any  
24 bad faith or harassment by state officials, or that he will be irreparably injured by  
25 waiting until the conclusion of the California criminal proceeding to assert his  
26 claims.

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1       The holding in *Carden* confirms that abstention is appropriate here. In that  
2 case, the petitioners had moved in state court for a dismissal of the claims against  
3 them, alleging a violation of their constitutional right to a speedy trial. The trial  
4 court granted the motion but the Montana Supreme Court reversed. The  
5 petitioners then filed their petition for writ of habeas corpus in the United States  
6 District Court. The district court granted the petition finding a violation of  
7 petitioners' constitutional right to a speedy trial. In reversing the grant of the writ,  
8 the Ninth Circuit ruled that the merits of the speedy trial claim did not determine  
9 the appropriateness of federal intervention. The court noted that "unlike the  
10 Double Jeopardy Clause, the Speedy Trial Clause, when raised as an affirmative  
11 defense, does not embody a right which is necessarily forfeited by delaying  
12 review until after trial. . . . Rather[,] . . . a speedy trial claim is best reviewed after  
13 trial when the district court's dismissal is more conclusive and allegations of  
14 prejudice are less speculative." 626 F.2d at 84.

15       Like the speedy trial claim in *Carden*, petitioner's claims here do not  
16 embody rights which are "necessarily forfeited by delaying review until after  
17 trial." *Id.* As the Supreme Court stated in *Younger*, a criminal prosecution, "even  
18 though alleged to be unauthorized and hence unlawful is not alone ground for  
19 relief . . . ." 401 U.S. at 46.

20       Here, as in *Carden*, all of petitioner's claims will be subject to review after  
21 trial. Petitioner has failed to demonstrate the extraordinary circumstances  
22 necessary to justify interference in the ongoing state proceedings.

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1 IT THEREFORE IS ORDERED that this action be summarily dismissed.  
2 LET JUDGMENT BE ENTERED ACCORDINGLY.  
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4 DATED: January 27, 2009

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7 STEPHEN G. LARSON  
8 United States District Judge  
9

10 Presented by:

11  
12 /s/ FREDERICK F. MUMM  
13 FREDERICK F. MUMM  
14 United States Magistrate Judge  
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